

The Tobacco Products Tax Act is imposed upon the last distributor who sells tobacco products to a retailer or consumer in Illinois at the rate of 18% of the wholesale price of tobacco products sold or otherwise disposed of in Illinois. See 35 ILCS 143/10-1 et seq. (This is a GIL.)

January 12, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated November 19, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

The purpose of this fax is to clarify a tobacco tax issue. To my understanding the tobacco taxes in Illinois (18%) are based on the invoiced prices. This is our scenario when attempting to sell cigars in your state.

We sell cigars, cigar accessories, acrylic humidors as well as provide a service to our customers in which we package the cigars in glass tubes for them. When we provide this type of service, our invoices (see attached) reflect a charge for the cigars on one line item and the glass tubes, packaging, shipping and handling, management fees on a separate line item. The question is 'Are tobacco taxes due on the glass tubes, packaging, shipping and handling, management fees, or on the actual cigars?

Enclosed please find a copy of our invoice for your state. Please advise if this is legal in your state.

Your prompt response is greatly appreciated.

It was difficult to determine the exact nature of your business from the limited information in your letter. If you make sales for resale, please see the discussion below regarding resale certificates. In addition, please note that as Section 130.2070 explains, sales of containers to persons who sell tangible personal property in the containers are considered sales for resale if the purchasers of the containers transfer ownership of the containers, together with the ownership of the tangible personal property contained in such containers. The case of Boye Needle Co. v. Dept. of Revenue, 45 Ill.2d 484 (1970), applied this rule in determining that a manufacturer's purchase of a display case given to retailers for use in displaying the manufacturer's products was not subject to Use Tax because it was a sale for resale.

Please find enclosed a copy of the Department's administrative regulations governing the Tobacco Products Tax Act of 1995. As you can see, the Tobacco Products Tax Act is imposed upon the last distributor who sells tobacco products to a retailer or consumer in Illinois at the rate of 18% of the wholesale price of tobacco products sold or otherwise disposed of in Illinois.

Section 660.10 of the Department's regulations provides a definition of "wholesale price." That term is defined as the established list price for which a manufacturer sells tobacco products to a distributor, before the allowance of any discount, trade allowance, rebate, or other reduction. In the absence of such an established list price, the manufacturer's invoice price at which the manufacturer sells the tobacco product to unaffiliated distributors, before any discounts, trade allowances, rebates or other reductions, shall be presumed to be the wholesale price. The wholesale price of tobacco products is the established list price at the time of purchase, by the distributor who remits tax to the Department, of such tobacco products.

Section 10-5 of the Tobacco Products Tax Act, 35 ILCS 143/10-5 defines "tobacco products" as "any cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweeping of tobacco; and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking."

Cigar accessories and acrylic humidors sold to retailers who will resell them generally do not fall within the definition of tobacco products and are therefore not subject to the Tobacco Products Tax Act. However, the sales of such items at retail would be subject to Retailers' Occupation Tax. If the items were sold for resale, then purchasers of such items must present a valid Certificate of Resale to their supplier. See the enclosed copy of 86 Ill. Adm. Code 130.1405. Certificates of Resale must contain the following items of information:

1. a statement from the purchaser that items are being purchased for resale;
2. seller's name and address;
3. purchaser's name and address;
4. a description of the items being purchased for resale;
5. purchaser's signature and date of signing;
6. purchaser's registration number with the Illinois Department of Revenue, or purchaser's resale number issued by the Illinois Department of Revenue.

Please note that an Illinois Circuit Court has recently held The Tobacco Products Tax Act of 1995 unconstitutional by ruling that the imposition of the

Act violates the single-subject rule of the Illinois Constitution. This case is currently under appeal to the Illinois Supreme Court.

Where the seller engages in the business of selling tangible personal property at retail, and such tangible personal property is installed or altered for the purchaser by the seller (or some other special service is performed for the purchaser by the seller with respect to such property), the gross receipts of the seller on account of his charges for such installation, alteration or other special service must be included in the receipts by which his Retailers' Occupation Tax liability is measured, if such installation, alteration or other special service charges are included in the selling price of the tangible personal property which is sold. See 86 Ill. Adm. Code 130.450, enclosed. This is true whether the charge for the property which is sold and the charge for installation, alteration or other special services are billed by the seller to his customers as separate items (except when the purchaser signs an itemized invoice so as to make it a contract reflecting the intention of both the seller and the purchaser), or whether both items are included in a single billed price.

However, where the seller and the buyer agree upon the installation, alteration or other special service charges separately from the selling price of the tangible personal property which is sold, then the receipts from the installation, alteration or other special service charge are not a part of the "selling price" of the tangible personal property which is sold, but instead such charge is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability.

When suppliers give displays, signs, brochures, etc. to their customers in order to promote sale of their products, the suppliers owe Use Tax on the cost price of such items.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.